U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-M-C-G-

DATE: OCT. 17, 2016

MOTION ON TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a high school science teacher, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment-based second preference immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. We dismissed a subsequent appeal. We thoroughly discussed the Petitioner's submissions and determined that although she established her qualifications as "an advanced degree professional and that her proposed work as a high school science teacher has substantial merit," she did not show that her proposed employment will be national in scope or that she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. *See Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (setting forth several factors that must be considered when evaluating a request for a national interest waiver). Specifically, we found that "the record does not indicate that the impact of her own proposed work as a science teacher would offer national benefits" and that while she has had a "positive impact...on her own students and school district," the submitted evidence did not demonstrate "that she has had an influence on the field of science or physics education generally."

The matter is now before us on a motion to reopen. Upon review, we will deny the motion.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *Abudu*, 485 U.S. at 110.

On motion, the Petitioner describes her personal circumstances rather than providing new facts relating to her eligibility for this employment-based immigration benefit. As USCIS does not have

discretion to ignore binding precedent under 8 C.F.R. § 103.3(c), her eligibility must be determined according to the framework set forth in *NYSDOT*.

We also note that, in order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion must be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." The Petitioner does not submit the required statement on motion.

For the above stated reasons, the Petitioner's filing does not meet the requirements of a motion to reopen and must be denied.

ORDER: The motion is denied.

Cite as *Matter of L-M-C-G-*, ID# 29257 (AAO Oct. 17, 2016)